

Division of Alcoholic Beverage Control

The Division of Alcoholic Beverage Control's mission is to protect the public's health, safety and welfare by strictly regulating how alcoholic beverages are sold and by fostering moderation and responsibility in alcohol consumption. The Division fulfills its purpose by regulating and licensing the manufacture, distribution, sale and transportation of all alcoholic beverages within the state. Essential to the state's control of the liquor industry is the concept that licensees are granted a privilege to sell alcoholic beverages and that this privilege may be forfeited for any violation of the alcoholic beverage law or regulations. If a licensee violates any law or regulation, the Director may suspend or revoke the license or impose a fine and/or any other appropriate condition on the license.

Retail licenses are generally issued by the city or town where the business is located, although the Division may issue a retail license in certain circumstances. Both the municipal issuing authority and the State ABC have concurrent jurisdiction to investigate and prosecute violations by retail licensees.

The issuance of new licenses as well as transfers and renewals of existing ones must be approved by the municipal issuing authority and then sent to the Division where the information is processed. The ABC is the official repository for license ownership information. The Division is the sole issuing authority for manufacturing and wholesale licenses and for a variety of special permits for various charitable and business-related events. There are approximately 9,500 separate ABC licenses and more than 26,000 permits and insignia issued.



Highlights for 2006

Underage Drinking—

The Division's number one priority continues to be combating underage drinking. The agency worked to accomplish this through a comprehensive plan that includes both law enforcement and public awareness and education programs. Highlights of this plan include:

Cops in Shops—

In 1996, the Division launched a state-wide initiative, known as Cops in Shops, to curtail underage drinking. The program brings undercover law enforcement officers and local retail establishments together in a partnership designed to deter the sale of alcohol to underage individuals and stop adults from attempting to purchase alcohol for people under the legal age. To further deter young people from attempting to purchase alcohol, participating retail establishments display posters on doors and throughout the store and place stickers on cold cases, warning that an undercover officer may be on the premises.

Originally implemented in a handful of towns with significant numbers of college-age students in the fall and in resort areas with large influxes of young people in the summer months, the program's unprecedented success has resulted in a demand from jurisdictions around the State to expand the program. To date, more than 200 towns have been trained to run a Cops in Shops program.

Arrest numbers since the program's inception reinforce not only the effort's success but the difference it has made in the public safety. To date, approximately 6,300 individuals have been arrested through the Cops in Shops program. Approximately 240 arrests were made, with 304 separate offenses charged, in the summer of 2006 under the annual Shore initiative funded through a grant from the State Division of Highway Traffic Safety. The college town Cops in Shops program, run during the fall/winter of 2005-2006 and also funded by a grant from the Division of Highway Traffic Safety, resulted in 93 arrests, with 124 separate offenses charged.

Compliance Checks—

Working with local police departments and County Prosecutors' Offices, the Division is running year-round compliance checks in licensed establishments that typically attract younger patrons. Police officers, ABC investigators and prosecutors conduct operations identifying the underage purchasers, as well as those that sell to them.

Package Store Training Video—

In 2006, the Division produced a 20-minute training video designed to assist package store owners identify potential underage individuals attempting to purchase alcohol. A companion video to the server training video produced two years ago, this new effort will offer detailed information to help liquor store owners and their employees prevent the sales of alcohol to persons under the age of 21.

“Dangers of Underage Drinking” 2007 Billboard and Calendar Competition—

A cooperative effort between the Division of Alcoholic Beverage Control and the Partnership for a Drug-Free New Jersey, this state-wide initiative is designed to encourage middle school students and their parents to work together to create billboard and calendar messages with the theme ADangers of Alcohol.

The 2006-2007 program produced more than 2,000 entries statewide for the 2007 calendar. Thirteen winning messages, selected from the submissions, are chosen each year and are featured on a calendar that is distributed to all middle schools. The grand prize winning message is reproduced on highway billboards throughout the state. Additionally, the 2006 calendar was recognized with an award of excellence from the New Jersey Advertising Club.

Enhancing Relationships with Prevention Organizations—

The Division continued in 2006 to foster working relationships with substance abuse and prevention organizations throughout the state. Specifically, the Division continued working with the Childhood Drinking Coalition, an organization comprised of government, prevention, law enforcement and edu-



cation representatives. ABC representatives also worked with the Governor's Counsel on Alcoholism and Drug Abuse, and served on the counsel's Alliance Sub-Committee. The Division also supported the national Town Hall Meeting initiative, organized by the State's Division of Addiction Services.

Higher Education Consortium Training—

The Division has continued to work with the Higher Education Consortium on providing training workshops and conferences for college educators, prevention specialists, and the law enforcement community on the latest approaches to combating underage drinking in and around the college campus.

In 2006, a symposium was held on alcohol issues and challenges in higher education. The intent of this symposium was to train college prevention teams, including residence life, law enforcement, judicial affairs, and alcohol and substance abuse prevention specialists, to prevent and intervene effectively with alcohol and other drug related incidents on campus, in residence halls, and in surrounding communities. More than 150 attendees representing 22 colleges attended two sessions, one in the northern and one in the southern region of the state. Additionally, a third program was held for community college representatives.

Regulatory Efforts

Recognizing that the Division plays a critical role in ensuring the public's health, safety and welfare, the agency set forth the following regulatory efforts to enhance the quality of life in every municipality:

ABC Advisory Committee—

Comprised of representatives from the alcoholic beverage industry, the committee was reconstituted in 2006 and charged with discussing and analyzing various ABC issues impacting government, the industry and the public. The committee also makes recommendations to the Director on proposed regulations and policy issues.

Municipal Appeals—

The Division also acts as the appellate authority for any appeal that may be taken by a licensee or an interested party from any actions by the local issuing authority. In 2006, the agency rendered 567 rulings on petitions filed by licensees for permission to renew their licenses under special circumstances. The Division received 96 appeals related to licensing actions by municipalities. Additionally, 105 contested matters pending in the Office of Administrative Law were also monitored, and 69 cases were closed.

Enhanced Agency Hearing Procedures—

During the past six years, the Division has continued its efforts to become more responsive to community concerns regarding problem liquor licenses, specifically through enhanced hearing procedures. The in-house hearing process has been invigorated through an interim relief hearing by the Director before a matter is referred to the Office of Administrative Law for a full hearing, thereby ensuring that quality of life issues that indirectly impact residents are heard in a prompt and efficient manner.

Significant Cases

Direct Shipment of Wine—

Legislation was signed in August 2004 that eliminated the statutory provisions authorizing the direct shipment of alcoholic beverages by in-state wineries within New Jersey. Specifically, the new law eliminated the disparity between in-state and out-of-state companies without harming in-state licensees. The Division recommended this repeal in order to promote public safety and retain and preserve the benefits of New Jersey's three-tier system of distribution, which provides the most effective means of ensuring the safe distribution and sale of alcoholic beverages to New Jersey consumers. This system maintains trade stability and helps ensure physical control and access to sellers of alcoholic beverages for both regulation and enforcement purposes and prevents the distribution of adulterated or illegally obtained products.

Currently, the Division is defending a suit in federal court (*Freeman v. McGreevey*) that alleges New Jersey's existing system, even with the August 2004 legislative changes, violates the dormant commerce clause by discriminating against out-of-state wineries.

Division of Alcoholic Beverage Control v. Maynard's Inc.—

On November 28, 2006, the Division argued an appeal from Maynard's Café before the New Jersey Supreme Court. The issue on appeal is: "Is a liquor licensee responsible for the acts of its employees if those acts are undertaken without the licensee's knowledge and participation, and in contravention to the licensee's instructions?" A decision is forthcoming.

M.A.G. Entertainment—

The Division charged the licensee, M.A.G. Entertainment, with serving an intoxicated patron who subsequently caused a fatal motor vehicle accident. The Office of Administrative Law found the licensee guilty of the charge and recommended the liquor license be revoked. The ABC Director issued a Final Order and Conclusion affirming the OAL decision and ordered the license be revoked. The licensee has made a motion to reconsider to the Director.

Lewd Statute—

Constitutional challenges to the Division's regulation prohibiting "lewdness or immoral activity" on licensed premises were completed in 2006. The first case was decided by the Third Circuit on July 18, 2006. In a precedential decision, *181 South v. Jerry Fischer*, 454 F3d 228 (3d Cir. 2006), the court affirmed a District Court opinion and held that the regulation is not overbroad, vague or otherwise in violation of federal constitutional guarantees of free expression. The licensee sought several rehearings, which were denied. The licensee's time for filing an appeal to the United States Supreme Court has expired.

Service/Consumption of Alcohol by Underage Individuals—

Following are significant cases handled by the Division's Enforcement Bureau related to underage sales and consumption of alcohol. These cases were closed in 2006.

■ **UHR, LLC, trading as Hooters:** The licensee was charged with 13 sales to persons under the legal age;

■ **Jo Barb, Inc., trading as Platinum:** The licensee was charged with sales to 12 persons under the legal age, 2 narcotic transactions on the premises, and 2 paper violations;

■ **Bamboo II, trading as Bamboo:** The licensee was charged with serving multiple underage patrons;

Investigative Efforts

The Division's Investigations Bureau examined 3,385 matters involving the alcoholic beverage industry. Of those, 50 percent, or 1,719, were compliance inspections which noted in excess of 3,500 potential administrative violations. As part of the Division's commitment in reducing underage consumption of alcohol, the bureau conducted 36 operations targeting establishments catering to young customers. A total of 2,127 persons were "carded" for identification and 181 arrests for the sale, service and/or consumption of alcoholic beverages by underage persons were made during these enforcement actions. In addition to the criminal arrests, the cases were forwarded to the Division's Enforcement Bureau for review of administrative violations against the licensee.

The bureau strives to work closely with all levels of law enforcement, and conducted 11 training seminars for more than 400 law enforcement personnel and municipal clerks. An important component of the bureau's mission is to ensure that the unlicensed and unregulated sale of alcohol is identified and prosecuted. During this year, the bureau has conducted three criminal investigations of the sale of alcohol without a license resulting in three arrests, the posting of \$75,000 in cash bonds in lieu of forfeiture and the seizure of four stills. The latter was the first seizure of stills in over 40 years.

